IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 11.07.2006

Criminal Appeal No. 2036 of 2001
(Old No. 646 of 1988)

Babu Lal
S/o Shri Prem Singh
R/o Village Nahad
P.S. Sahaspur, District Dehradun ……Appellant

Versus

State ……Respondent

Mr. Paresh Tripathi, Advocate on behalf of Mr. Lokendra Dobhal, Advocate for the appellant.
Mr. D.K. Sharma, learned Government Advocate for the State.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initials of Judges)

Date: 11.07.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 2036 of 2001
(Old No. 646 of 1988)

Babu Lal
S/o Shri Prem Singh
R/o Village Nahad
P.. Sahaspur, District Dehradun …….Appellant

Versus

State …….Respondent

Mr. Paresh Tripathi, Advocate on behalf of Mr. Lokendra Dobhal, Advocate for the appellant.
Mr. D.K. Sharma, learned Government Advocate for the State.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein-after for brevity referred as Cr.P.C.), is directed against the judgment and order dated 19.02.1988, passed in Sessions Trial No. 04 of 1986 whereby learned Sessions Judge, Dehradun, has convicted appellant Babulal under Section 302 Indian Penal Code, 1860 (herein after referred as I.P.C.) and sentenced him to imprisonment for life.

2. We heard learned counsel for the appellant and learned Government Advocate and perused the entire record.

3. Prosecution story in brief is that Surendra Singh (deceased), R/o village Nahad, was transporting boulders in his tractor trolley at the house of one Bhupendra Singh and Pratap Singh. On 25.10.1985, after making two rounds in the morning, he came back in the third round to pick up the boulders along with Prem Singh (P.W. 3), driver of the tractor ,and labourers Singh (P.W. 2), and one Pappu, from the field of accused/appellant Babulal. It was 10:30 A.M. when Surendra Singh wanted to park the tractor in the field of Babulal so that the boulders may be lifted conveniently. Accused Babulal had objection to this. He apprehended that this would cause damage to the boundary wall in the field. When Surendra Singh (deceased) with his driver Prem Singh and labourers attempted to move the tractor from the road towards the field of Babulal, he came out from his house with 'BASULA' (a sharp edged equipment used generally by carpenters and villagers to make small pieces of wood) in one hand and a piece of wood on the other. Surendra Singh (deceased) insisted to take tractor to the field while Babulal stuck on not permitting to do so and they started quarrelling. Accused/appellant Babulal, then gave a blow with BASULA on the neck of Surendra Singh, who fell down on the ground. Before P.W. 3 Prem Singh, driver, Labourer Satto (P.W. 2) and Pappu, could reach for rescue of Surendra Singh, Babulal further inflicted 2-3 blows of BASULA on Surendra Singh and ran towards his house. Surendra Sing died on the spot. His nephew Raj Pal Singh (P.W. 1), got

the First Information Report (Ext. A-1), scribed through one Rishipal Singh and lodged the same at about 1:30 P.M. with Police Station- Sahaspur, which is at a distance of 17 Kms. Away from the place of occurrence. Constable Ram Swaroop (P.W. 8) prepared check report (Ext. A-3) on the basis of First Information Report (Ext. A-1) and made necessary endorsement in the general diary, extract of which is Ext. A-14. Sub Inspector J.V. Badgoti (P.W. 11), who was busy with Himalayan Car rally, received the papers from the police station at about 4:00 P.M. and proceeded towards the place of occurrence. He took in his possession the dead body of Surendar Singh and prepared inquest report (Ext. A-7), sketch of dead body (Ext. A-8), police from No. 13 (Ext. A-9), letters (Ext. A-10 and Ext. A-11) to Chief Medical Officer, requesting for post mortem examination and sent the dead body in mortuary, for post mortem examination in a sealed cover with Constable Hari Singh and Constable Satey Singh. Meanwhile, the Investigating Officer collected simple soil and blood stained soil in containers (Ext. 8 and Ext. 9) and prepared memo (Ext. A-12). He further took into possession pair of shoes of the deceased, found at the spot and handed over the same to Raj Pal Singh, nephew of the deceased and prepared memo (Ext. A-13). By then it was night and further investigation was made next day. The Investigating Officer, recovered BASULA –Ext. 1 (a sharp edged equipment, used by carpenters and villagers) and prepare memo (Ext. A-6). He further recorded the statement of witnesses including that of Bala Devi

(P.W. 4) on 26.10.1986. He also prepared site plan (Ext. A-15). On the same day, statements of witnesses Satto (P.W. 2) and Pappu, were recorded by the Investigating Officer. He further recovered blood stained clothes and prepared memo (Ext. A-5). The blood-stained articles were sent for chemical examination on 30.11.1985. On completion of the investigation, the Investing Officer submitted the charge sheet (Ext. A-18) before the learned Magistrate.

4. The learned Magistrate after giving necessary copies to the appellant, as required under Section 207 of Cr.P.C., committed the case to the Court of Sessions for trial of the accused. The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 I.P.C. against the appellant Babulal that he committed murder of Surendra Singh in village Nahad, District Dehradun on 25.10.1985 at about 10:30 A.M.. The accused/appellant Babulal, pleaded not guilty and claimed to be tried. Where after, before the trial court, prosecution got examined in all twelve witnesses, namely, P.W. 1 Rajpal Singh, informant, P.W. 2 Satto, labourer and eye-witness, P.W. 3 Prem Singh, tractor driver and eye-witness, P.W. 4 Bala Devi, third eye-witness, P.W. 5 Dr. M.K. Dwivedi, who conducted autopsy on the dead body and prepared post mortem examination report, P.W. 6 Pratap Singh, P.W. 7 Constable Hari Singh (who took the dead body in a sealed condition for post mortem examination), P.W. 8 Constable Ram Swaroop (who prepared check report), P.W. 9 Vikram Singh,

P.W. 10 Bhupendra Singh, P.W. 11 Sub-Inspector J.V. Badgoti (Investigating Officer) and P.W. 12 Constable Dharampal. All oral and documentary evidence was put to the accused person by the trial court, as required under Section 313 of Cr.P.C. in reply to which, he submitted that when Surendra Singh (deceased) insisted on taking tractor to his (accused's) field, which would have caused damage to his crop and boundary wall in the field, he (accused) did not permit it, Surendra Singh grappled with him and tried to throttle his neck. However, he could not explain how the deceased got injuries of 'BASULA' and alleges that he has been falsely implicated in the crime. Learned Sessions Judge, after hearing both the sides, found the accused Babulal guilty of offence punishable under Section 302 of I.P.C. and accordingly convicted him. After hearing on sentence, learned sessions Judge, sentenced accused/appellant to imprisonment for life. Aggrieved by said judgment and order dated 19.02.1988, this appeal was filed by the convict before the Allahabad High Court on 24.02.1988. The appeal is received by transfer to this Court under section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of Surendra Singh (deceased). P.W. 5 Dr. M.K. Dwivedi, Medical Officer who conducted autopsy on the dead body of deceased Surendra Singh on 26.10.1985 at 2:00 P.M. and prepared the post mortem

Examination report (Ext. A-2), recorded following ante mortem injury on the person of the deceased:-

1. **Multiple incised wound in an area of 10cm x 11cm on left side of face extending backwards to the neck, of the diameters of 6cm X 2 ½ cm to 2cm 1/2 cm X tissue deep.**
2. **Incised wound 5cm X 5cm X tissue deep, one inch below injury No. 1.**
3. **Incised wound 7cm X 3cm X tissue deep. 1cm below injury No. 2.**
4. **Incised wound 6cm X 3cm X tissue deep on front of left shoulder.**

On internal examination of the dead body, the membranes and brain were found congested, both the lungs found pale, both chambers of heart were empty and weighed 160 grams. The stomach was found containing 4 ounces of food in the process of digestion, small intestine was empty and large intestine contained faecal matter and gases. Liver, pancreas, spleen and kidneys were found pale. Bladder was empty. In the opinion of Dr. M.K. Dwivedi (P.W. 5), the cause of death was shock and haemorrhage, as a result of ante mortem injuries.

6. P.W. 3 Prem Singh, the tractor driver, P.W. 2 Satto, a labourer and P.W. 4 Bala, sister of the deceased

are the eye-witnesses of the incident. All the three have stated that Surendra Singh (deceased) was transporting boulders from the field of appellant Babulal, which had been sold by him. According to the witnesses, it was about 10:30 in the morning when in the third trip, Surendra Singh came to take the boulders in a tractor trolley. The eye-witnesses, state that since boulders were heavy, Surendra Singh (deceased) wanted that the tractor should be permitted to be taken to field while the accused insisted to park the tractor on the road only. (This fact that accused denied permission, as he apprehended damage to the crop and boundary wall is also admitted to the accused in his statement under Section 313 of Cr.P.C.). P.W. 3 Prem Singh, the tractor driver, P.W. 2 Satto, labourer and P.w. 4 Bali, sister of the deceased, who were working in the near-by village, state that when Surendra Singh and accused started quarrelling over the issue of taking the tractor to the field of Babulal, the latter who was armed with BASULA (a sharp edged equipment used by carpenters and villagers to cut the wood pieces) hit on the neck of Surendra Singh and when Surendra Singh fell down, he further inflicted 2-3 blows on the person of the deceased. The statements of the three eye-witnesses, get corroboration from the ante mortem injuries, narrated above, found by P.W. 5 Dr. M.K. Dwivedi, at the time of post mortem examination. There are as many as four incised wounds. The incident is of daytime. The presence of witnesses is natural and trustworthy. The presence of witnesses is natural and trustworthy. P.W. 2 Satto and P.W. 3 Prem Singh are not related or interested eye-witnesses nor had they any

enmity with the appellant. In the circumstances, the ocular evidence, as narrated by the above three eye-witnesses, is reliable and cannot be disbelieved. That being so, we have no hesitation in holding that the prosecution has been successful in proving that appellant Babulal inflicted the injuries with BASULA on the person of the deceased, which resulted in his death.

7. Now, the question before us is whether the act on the part of appellant, proved by the prosecution, amounts to commission of murder or not. Learned counsel for the appellant argued that the appellant had a right of self-defence not only with regard to the danger to his person but also to his property. As far as the danger to the person is concerned since Surendra Singh was not armed with any weapon, as such there is no question of danger to the life of appellant Babulal. As to the throttling, as he has alleged in the statement under Section 313 of Cr.P.C., the fact has not been proved by adducing evidence on that point. However, the danger to the property can be said to have been made out as Surendra Singh admittedly insisted to take tractor to the field, and it would have certainly damaged the crop and wall of the field of the appellant. However, it is settled principle of law, as provided in Section 97 read with Section 99 and Section 101 of I.P.C. that the right of private defence in no case extends to inflicting of more harm than it is necessary to inflict for the purpose of defence. As such, when after the first blow of BASULA on the person of

Surendra Singh, he fell down, the appellant had no right of self defence thereafter to inflict further 2-3 blows to cause his death. That being so, the act on the apart of appellant is covered under Exception 2 to Section 300 of I.P.C.

8. In ***Bishna Vs. State of West Bengal (2005) 12 Supreme Court Cases 657,*** the Apex Court has held that the plea of right of private defence, need not be specifically taken by the accused and if the material on record makes the court to come to that conclusion, it may act thereupon despite that the plea was not specifically raised. Therefore, in our opinion the act of the accused, in the present case, does not amounts to commission of murder, rather it amounts to culpable homicide not amounting to murder. Similar view has been taken in ***Kashiram Vs. State of Madhya Prades (2002) 1 Supreme Court Cases 71.*** Following the aforesaid two case laws of Hon'ble the Supreme Court, we hold that appellant Babulal is guilty of charge of offence, punishable under section 304 Part II I.P.C. and not one under Section 302 I.P.C. In both the above referred cases, the Supreme Court has sentenced the convicts to rigorous imprisonment for seven years. In the present facts and circumstances of the case, we are also of the view that the sentence of seven years rigorous imprisonment, if awarded to the appellant, would meet the ends of justice.

9. Accordingly, for the reasons as discussed above, the appeal is partly allowed. Appellant Babulal is

acquitted of the charge of offence punishable under Section 320 I.P.C. Instead he is convicted for offence punishable under Section 304 Part II I.P.C. The sentence of imprisonment for life, awarded against him by the trial court is also set aside and he is sentenced to seven years rigorous imprisonment under section 304 Part II I.P.C. The appellant is on bail. His bail is cancelled. The concerned trial court shall take the appellant into custody to serve out sentence of seven years of rigorous imprisonment. The period, if any, undergone during the trial or appeal, shall be adjusted against the sentence awarded.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 11.07.2006

Sweta